



## Targeted consultation on the Listing Act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs.

[Link to the paper: Targeted consultation on the Listing Act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs](#)

### **1.- Target audience (potential stakeholders):**

This consultation is addressed to all stakeholders:

- Member States and their National Competent Authorities (NCAs);
- ESMA;
- market participants, including SMEs (admitted to trading on any market or to be admitted to trading);
- other companies other than SMEs;
- regulated markets;
- retail and institutional investors, and their organisations;
- investment firms (IFs) and other financial intermediaries;
- business consultants accompanying companies in the Initial Public Offering (IPO) process and any other related service providers.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the consultation to the following email address: [Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es).

### **2.- Information Note**

This targeted consultation is part of an initiative of the European Commission aimed at making trading in securities and in different types of securities on EU public markets more attractive for companies, in particular small and medium-sized enterprises (SMEs). This would allow EU issuers to finance their activity and grow, innovate and generate employment, while maintaining a high level of investor protection and market integrity.

This initiative is aligned with the objectives of the Commission's Capital Markets Union (CMU) Action Plan of September 2020. Specifically, in Action 2 of the Action Plan, the Commission announced that it would assess whether the rules governing companies' listing on public markets need to be further simplified. Furthermore, Commission President *Von der Leyen*, in her State of the Union address in September 2021, announced a legislative proposal to facilitate SMEs' access to the capital markets in 2022.

For the purposes of this consultation, reference to SMEs should be understood as encompassing both SMEs, as defined in Commission Recommendation 2003/361, and SMEs, as defined in Article 4(1)(13) of MiFID II. Commission Recommendation 2003/361 classifies as SMEs companies that employ fewer than 250 people and have a turnover not exceeding €50 million and/or a balance sheet not exceeding €43 million. MiFID II classifies SMEs as companies that had an average market capitalisation of less than €200 million on the basis of year-end quotes for the previous three calendar years. MiFID II introduced the concept of “SME growth markets” as an MTF (multilateral trading facility) in which at least 50% of issuers are SMEs, aimed at facilitating high-growth SMEs’ access to public markets and increasing their funding opportunities.

The targeted consultation has been published in parallel to a public consultation which only covers section one on general questions.

The consultation paper is structured as follows:

1) Section one: General questions on the overall functioning of the current regulatory framework. This section is intended to gather the experience of stakeholders with regard to the current rules and their need for adaptation or amendment.

Specifically, the questions are related to three main aspects: i) the reasons behind the lack of attractiveness of EU public markets (excessive compliance, lack of flexibility for issuers - rigid shareholding structures - lack of liquidity of securities); ii) costs of listing compared with benefits, both in the initial public offering stage and ongoing listing stage, including indirect costs arising from compliance; and iii) specific factors that explain the low investment in SMEs (lack of visibility leading to a lack of liquidity for SME securities, lack of investor confidence, lack of tax incentives, low retail participation in public markets).

2) Section two: Questions on various technical aspects of current rules for the admission to trading, grouped according to their applicable legal text.

*Prospectus Regulation.* The questions refer to the costs stemming from the drawing up of the different types of prospectuses and the assessment of various aspects of the regulation, such as exemptions from the obligation of publishing a prospectus, the standard prospectus for offers of securities or for the admission to trading of securities on a regulated market (summary, incorporation by reference, prospectus for non-equity securities), the content of the prospectus for the SME growth market, the format and language of the prospectus, the simplified regime for secondary issuances of companies whose securities are listed on a regulated market or on an SME growth market and the possible replacement by a prospectus similar to the recovery prospectus, the liability regime of the prospectus, the sanctioning framework, the rules on the scrutiny and approval of the prospectus, its possible convergence and the limited use of the Universal Registration Document. There are also questions related to other areas for improvement, such as, the equivalence regime.

*Market Abuse Regulation (MAR).* The questions seek to gather information to assess whether there is room for amendments in order to improve proportionality and reduce costs arising from the duty of compliance. Specifically, the questions are related to: the scope which is also extended to securities which have requested their admission to trading on an MTF; the definition of inside information (the point in time when it is considered as such and the maturity of the information) and the conditions to delay its disclosure; whether only issuers of bonds should have a different regime for the disclosure of inside information; the threshold of €5 million for reporting transactions carried out by managers; the effect of simplifying the insider lists for issuers listed on SME growth markets, the ways of simplifying the complexity of the market sounding regime (solely amending the procedures as proposed by ESMA or other

elements) and the extension of the exemption to private equity placements for issuers on SME growth markets; the proportionality of the sanctioning regime (maximum amounts of sanctions, annual turnover for legal persons or criminal sanctions); the removal of the obligation on market operators to “agree to the contracts’ terms and conditions” defined by issuers and IFs in liquidity contracts used on SME growth markets; and the possible exemption from the regime for the presentation of investment recommendations for securities admitted to trading on SME growth markets.

*MiFID II.* The consultation proposes certain targeted adjustments (already suggested in previous papers) to facilitate SMEs’ access to public markets: i) including in Level 1 the possibility of registering a segment of an MTF as an SME growth market (currently under an ESMA Q&A); ii) clarifying that issuers can request a dual listing and the terms and conditions thereof; iii) alleviating (beyond the COVID-19 recovery package) the research regime on SME securities, for example, by increasing the cases falling under the minor non-monetary benefits regime or proposing other exemptions from the unbundling regime for fixed income, currencies and commodities research, as well as for independent research.

*Other possible areas for improvement.* The paper seeks feedback as to whether there is potential to simplify issuers’ disclosure requirements under the Transparency Directive (interim reports or notification of significant changes in shareholders). In view of the use of Special Purpose Acquisition Companies (SPACs) as a way of investing via an IPO or on a secondary market, the paper seeks feedback as to whether this type of investment should be reserved for professional investors and whether it is necessary to harmonise the disclosure regime in the European Union, for example, to ensure that post IPO investors obtain information about warrants subscribed by the sponsors or by the initial shareholders. In relation to *Directive 2001/34/EC on the admission of securities to official stock exchange listing* (amended by the Prospectus Directive and MiFID), the paper seeks stakeholders’ opinions as to whether it should be amended or repealed, as well as on the validity of the conditions for listing, the specific conditions for the admission to trading of securities and the advantages of shares with multiple voting rights (their percentage in respect of the total shares and the clauses that eliminate the multiple voting rights after a certain period of time). The paper also seeks feedback on the advisability of requiring *corporate governance standards for companies listed on SME growth markets* with the aim of making them more attractive for investors. Finally, the consultation paper asks stakeholders whether they are aware of any cases of gold-plating by NCAs or Member States in relation to rules on admission to trading.

### **3.- Submission of comments**

The deadline for submitting comments is **11 February 2022**.

Respondents may send their comments through the online response form available at the following link: [https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted\\_en](https://ec.europa.eu/info/publications/finance-consultations-2021-listing-act-targeted_en)

Likewise, as indicated above, the CNMV would also appreciate it if stakeholders could send a copy of their responses to the call for evidence to the following address:

[Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es)

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